

SERVED: September 9, 1994

NTSB Order No. EA-4243

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 29th day of August, 1994

_____)	
DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-13250
v.)	
)	
CARDINAL DRILLING COMPANY,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent has appealed from the decisional order of Administrative Law Judge Patrick G. Geraghty granting the Administrator's motion to dismiss respondent's appeal for lack of jurisdiction.¹ For the reasons that follow, we deny the appeal and uphold the law judge's order.

¹A copy of the decisional order is attached. Respondent filed a brief on appeal and the Administrator filed one in reply.

By letter dated August 8, 1993, the Federal Aviation Administration (FAA), citing Section 605 of the FA Act,² notified Cardinal Drilling Company (CDC) that four of its aircraft were in effect being grounded for five days because "the inspection status of each aircraft is not current and the actual condition of each aircraft, engine, propeller and installed component is not known."³ Respondent appealed the letter to the NTSB, arguing

²Section 605 (b) of the FA Act, 49 U.S.C. app. § 1425(b), states, in pertinent part:

(b) The Administrator shall employ inspectors who shall be charged with the duty (1) of making such inspections of aircraft, aircraft engines, propellers, and appliances designed for use in air transportation, during manufacture, and while used by an air carrier in air transportation, as may be necessary to enable the Administrator to determine that such aircraft, aircraft engines, propellers, and appliances are in safe condition and are properly maintained for operation in air transportation; and (2) of advising and cooperating with each air carrier in the inspection and maintenance thereof by the air carrier. Whenever any inspector shall, in the performance of his duty, find that any aircraft, aircraft engine, propeller, or appliance, used or intended to be used by any air carrier in air transportation, is not in condition for safe operation, he shall so notify the carrier in such form and manner as the Administrator may prescribe; and, for a period of five days thereafter, such aircraft, aircraft engine, propeller, or appliance shall not be used in air transportation, or in such manner as to endanger air transportation, unless found by the Administrator or his inspector to be in condition for safe operation.

³The letter further stated,

"Also, aircraft configured with patient litters for medical evacuation have been determined to be unairworthy because they do not conform to an FAA approved type design when so configured.

Operation of any of the named aircraft is contrary to Federal Aviation Regulations and potentially unsafe."

that the matter was appropriate for Board review because the letter was tantamount to a suspension of CDC's air carrier certificate. On August 31, 1993, the law judge granted a motion by the Administrator to dismiss respondent's appeal on the grounds that the Board lacks jurisdiction to review Section 605 decisions.⁴

Citing Priority Air Dispatch v. NTSB, 514 F.2d 1135 (D.C. Cir. 1975), respondent asserts that the FAA's letter had the effect of altering CDC's operating authority. In Priority, the FAA had granted Priority Air Dispatch (Priority) an operating certificate and an exemption simultaneously, both of which were necessary for Priority to engage in the business of transporting hazardous waste. Several years later, the FAA terminated the exemption, effective immediately, and issued a revocation order against its operating certificate. The court found that the same logic which permitted the Board to have jurisdiction over revocations of ratings and authorizations, namely, that ratings and authorizations are "inextricably entwined" with the certificates, applied in Priority's case. Since the revocation of Priority's exemption altered its operating authority, the Board was required to review the FAA's action. Id. at 1337-38.

(..continued)

Although the letter only referenced Section 605(a), the Administrator later correctly cited Section 605(b) in his motion to dismiss respondent's appeal.

⁴Respondent termed the appeal an "emergency" but later waived any right to expedited emergency review. The Administrator disputed the classification of the appeal as an emergency.

We find respondent's argument that the FAA's action is a suspension order over which we have review authority unavailing.⁵

As the Administrator maintains, neither the language of Section 605(b), nor the holding in Priority compels Board review of the FAA's action in the instant case. The FAA did not terminate an exemption, but rather, under its statutory authority, found that certain aircraft were not in a condition for safe operation and consequently informed CDC that the aircraft were not to be used in air transportation for a period of five days. This action did not amend, modify, suspend, or revoke CDC's operating certificate; it simply prevented CDC, temporarily, from using certain equipment in the exercise of its certificate rights. Therefore, the Board does not have jurisdiction over respondent's appeal.⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The law judge's decisional order is affirmed.

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁵Under the Independent Safety Board Act of 1974, as amended, the National Transportation Safety Board shall "review on appeal [] the suspension, amendment, modification, revocation, or denial of any operating certificate or license issued by the Secretary of Transportation under sections 602, 609, or 611[e] of the Federal Aviation Act of 1958 and the revocation of any certificate of registration under section 501(e)(2) of such Act...." 49 U.S.C. § 1903(a)(9), citations omitted.

⁶Since review under section 605 is beyond the purview of the Board's authority, we do not reach CDC's argument that the FAA's action resulted in a denial of notice and an opportunity to be heard before the grounding.